under a mistake of fact, the court upheld the claim. It was not in dispute that there was a mistake and the only question was whether it was a mistake of fact or of law. Atkinson J held that it was a mistake of fact and the plaintiff was entitled to recover the overpayments.

In this case, it was not established before me that the units in the bills were multiplied five times because both the plaintiffs and the defendants were under the impression that the units recorded in the meter were required to be so multiplied in order to arrive at the rates of charges applied or charged by PUB. The plaintiffs have not proved what the agreement was with reference to the calculation or computation of the electricity charges in respect of the units recorded in the meter. On the evidence before me, I am not satisfied that the plaintiffs had discharged the burden of proving that payments of the bills were made under mistakes of fact.

What I have decided is sufficient to dispose of the case, and strictly it is unnecessary to deal with the second issue, ie the defence of estoppel raised by the defendants. However, as both counsel had addressed me on that issue, I think I should consider it; it can be disposed of very briefly. It is not clear to me on what basis the defendants founded the defence of estoppel; there was really no factual basis for it. The bills were made out by them; the computation therein was made by them; the bills were presented by them to the plaintiffs and they were paid by the plaintiffs. There were no acts or conduct on the part of the plaintiffs on the basis of which the defendants had relied and suffered any detriment. On the evidence before me estoppel clearly is not available to the defendants.

Counsel for the defendants relied on *Avon County Council* v *Howlett*.[2] That case is entirely different. There, the defendant was a teacher in the plaintiffs school and was injured in an accident in January 1974. Under his conditions of service he was entitled to full pay for the first six months, half pay for the next six months and nothing thereafter. However, the plaintiff paid him the full rate for the months from January to September 1974 and half rate of pay until August next year. The defendant made enquiries with the plaintiff and was told that the payments were correct. In reliance on this information he incurred certain expenses. Later, the plaintiff on discovering the mistake sought to claim from the defendant the amounts overpaid. The claim was resisted and the defendant raised the plea of estoppel by representation. It was held that since the defendant had been led by the plaintiffs representations to believe that he was entitled to treat the entirety of the overpayments as his own and had acted on those representations, the doctrine of estoppel by representation was a defence to the plaintiffs claim for the overpayments. In this case, there was no representation at all in any form held out by the plaintiffs; nor had the defendants showed that they had suffered any detriment. This defence raised by the defendants has no merit whatsoever. I rejected it.

Claim dismissed.

Solicitors: *Tan Kim Seng & Partners*; *PK Wong & Advani.*

Reported by *Terence Tan Bian Chye*

See Wan Chon v Chua Ka Bu

HIGH COURT (SINGAPORE) — SUIT NO 582 OF 1989
CHAN SEK KEONG J
11 MAY 1990

Civil Procedure — Mental disability of party — Plaintiff in coma at time action started — Whether defendant could apply for dismissal of action — Rules of the Supreme Court 1970, O 76 r 2 — Mental Disorders and Treatment Act (Cap 178, 1985 Ed), ss 2 & 3

Mental Disorders and Treatment — Jurisdiction — Whether assistant registrar had jurisdiction to order inquiry into mental health

This is an appeal against the order of the assistant registrar, made on the hearing for further directions, that the action be stayed. The plaintiff had suffered severe injuries, including a head injury, from a collision between his motor cycle and the pick-up van driven by the defendant. The defendant applied for a dismissal of the action on the basis of the medical report, on the ground of non-compliance with O 76 r 2 of the Rules of the Supreme Court 1970. This was because the plaintiff was in a coma or otherwise disabled on the date of the commencement of this action. The assistant registrar ordered a stay of proceedings pending the determination of the plaintiff's capacity in accordance with the procedure laid down in the Mental Disorders and Treatment Act (Cap 178, 1985 Ed) ('the Act'). On appeal, it was argued that the assistant registrar had no jurisdiction to order an inquiry under the Act and the question was whether the order amounted to the exercise of such jurisdiction.

As the appeal was by way of a rehearing, the learned judge decided to also deal with the application to dismiss the action. On this issue, the court had to consider the scope of the Act.

Held, allowing the plaintiff's appeal:

(1) By ordering a stay of proceedings pending an inquiry, the assistant registrar has, in substance, ordered an inquiry under the Act, albeit indirectly. The court did not think the assistant registrar can do indirectly what he cannot do directly. That would be sufficient to dispose of the appeal.

(2) A person who loses the use of his mental faculty as a result of an 'accident' (ie any unforeseen event) is a person of unsound mind for the purpose of the common law. There is no reason to believe that the legislature, in using the expression 'unsound mind' in the Act and not defining it, intends to give it a less comprehensive meaning as suggested by counsel, ie that it is only an alternative description of a lunatic. Accordingly, the court was of the view that if the plaintiff's mental condition is so

impaired by his head injuries that he is unable to manage his own affairs, he would be within the scope of the Act for the purpose of an inquiry thereunder.

(3) A procedural difficulty arises in applying O 76 r 2 to the application to dismiss the action. Under this rule, a person under disability may not bring an action except by his next friend. A person is under disability if he is a patient and a 'patient' means a mentally disordered person within the meaning of the Act. Section 2 of the Act defines a 'mentally disordered person' to mean any person found by due course of law to be of unsound mind and incapable of managing himself or his affairs. On this ground also, the application to dismiss the action must be dismissed. As framed, the rule makes it impossible for any party to apply to dismiss any action on the ground of disability due to mental disorder until and unless the other party has been so found by due course of law. The plaintiff was not a person under disability for the purpose of O 76 at the time he commenced the action.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 51 of 1990.]

Cases referred to

1 *Buxton* v *Jayne* [1960] 2 All ER 688 (refd)
2 *Barnsley's Case* 2 Eq Ca Abr 580; (1745) 22 ER 489 (refd)
3 *Ex p Cranmer* (1806) 12 Ves 445; 33 ER 168 (refd)

Legislation referred to

Mental Disorders and Treatment Act (Cap 178, 1985 Ed) ss 2, 3
Rules of the Supreme Court O 76 r 2
Mental Health Act 1959 [UK]

Cheong Yuen Hee (*Tommy Tan* with him) for the plaintiff/appellant.
Ramasamy s/o Karuppan for the defendant/respondent.

Cur Adv Vult

Chan Sek Keong J: This is an appeal against an order of the assistant registrar made on the hearing for further directions as follows:

(1) action to be stayed pending determination of the plaintiff's capacity in accordance with the procedure laid down in the Mental Disorders and Treatment Act (Cap 178, 1985 Ed);
(2) if the plaintiff is found to be of sound mind on 21 March 1989 this action to continue;
(3) if the plaintiff is found to be of unsound mind on 21 March 1989 this action to be dismissed with costs to be taxed up to the summons for directions stage and awarded to defendant;
(4) if plaintiff's state of mind on 21 March 1989 cannot be determined by inquiry and
    (a) he is found to be of sound mind at the conclusion of the inquiry, this action to continue;
    (b) he is found to be of unsound mind at the conclusion of inquiry, this action to continue but with the appropriate committee to prosecute the plaintiff's action by amendment under O 20 r 5;
(5) the costs of the day's hearing be awarded to the defendant fixed at $350.

The plaintiff had suffered severe injuries from a collision between his motor cycle and the pick-up van driven by the defendant. The plaintiff had, inter alia, a severe head injury (with intercranial haemorrhage) and was in a coma on being admitted to the Tan Tock Seng Hospital on the day of the accident. He was treated for his injuries and was discharged from hospital on 4 June 1988.

On 19 January 1989, the senior registrar of the Department of Neurosurgery of Tan Tock Seng Hospital gave a medical report on the condition of the plaintiff in which he stated, inter alia, that 'He [the plaintiff]was last seen here on 13 June 1988. He was bedridden. He could open his eyes, could not talk, could not answer questions and bedridden'.

On 21 March 1989, the present action was commenced. The statement of claim filed on 20 April 1989 gave full particulars of the injuries as certified in the medical report. On 16 May 1989, the defendant filed his defence. Directions for trial were given on 22 August 1989 following which the medical report was disclosed to the defendant. A month later, the defendant's solicitor applied for further directions for production of information pertaining to the alcoholic condition of the plaintiff on admission to hospital. The request to set down the action for trial was filed on 25 September 1989. On being told that the plaintiff was unable to give consent to the disclosure of his medical condition at the time of admission on the ground that the plaintiff was in a coma and after receipt of a copy of the medical report dated 19 January 1989, the defendant's solicitor amended and then reamended his application for further directions for, inter alia, the dismissal of the action on the basis of the medical report on the ground of non-compliance with O 76 r 2 of the Rules of the Supreme Court 1970.

It should be noted that the defendants did not seek a stay of proceedings on the ground that the plaintiff had become a disabled person since the commencement of the action. The defendant sought to dismiss the action on the ground that the plaintiff was in a coma or otherwise disabled on the date of the commencement of this action. The assistant registrar ordered a stay of proceedings on the terms as set out above.

The main ground of appeal is that the assistant registrar has no jurisdiction to order an inquiry under the Mental Disorders and Treatment Act (Cap 178, 1985 Ed) ('the Act'). It is not disputed that the assistant registrar has no such jurisdiction and that only a judge may order an inquiry under s 3 thereof. The only question is whether the orders made by him amounted to the exercise of such jurisdiction. Although the assistant registrar did not in form order an inquiry but a stay of proceedings pending an

inquiry, the effect of the stay is that the relatives of the plaintiff must apply for an inquiry before the plaintiff may proceed further with his action. I think the assistant registrar has, in substance, exercised such jurisdiction, albeit indirectly. I do not think the assistant registrar can do indirectly what he cannot do directly. This is sufficient to dispose of this appeal.

As the appeal before me is by way of a hearing, I think it will be more convenient for me to deal with the application to dismiss the action rather than to send it back to the assistant registrar. On this issue, counsel for the plaintiff has raised an argument relating to the scope of the Act. He contends that the Act applies to cases where the mental disorder is one of unsound mind and that a person of unsound mind is only an alternative description of a lunatic under the former Lunacy Act 1890. He suggests, by reference to the Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency 1954-1957 (Cmnd 169), and on which the Mental Health Act 1959 ('the 1959 Act') was based, that the expression 'unsound mind' has been discarded in favour of the expression 'mental disorder' which was more comprehensively defined to mean 'mental illness, arrested or incomplete development of mind, psychopathic disorder, or any other disorder or disability of mind'. He also refers to the Report of the Committee on Mentally Abnormal Offenders (Cmnd 6244, 1975) to show that the expression 'any other disorder or disability of mind' used in the 1959 Act was intended to apply to disabilities arising from head injuries, etc. By this process of reasoning, he says that there is a lacuna in the Act in that it applies only to lunatics, ie persons suffering from abnormality of mind (ie insanity in law) and persons suffering from other forms of mental disorder where such mental disorder is caused by head injuries.

I think this is an unsound argument. Although counsel is correct in submitting that the expression 'person of unsound mind' has the meaning of a 'lunatic' in the Lunacy Act of 1890 (see Devlin LJ in *Buxton* v *Jayne*[1] at p 697), that word meant an idiot or person of unsound mind. The word 'lunatic' was not confined to an 'idiot'. According to Lord Hardwicke LC in *Barnsley's Case*,[2] 'Unsound mind' or *insanae memoriae*, which all persons must understand to be a depravity of reason or want of it'. A person of unsound mind is non compos mentis in Latin. The common law recognizes four classes of non compos mentis. In *Ex p Cranmer*,[3] Lord Erskine LC at pp 450-452 said:

> Lord Coke in his commentary upon Littleton states what embraces every possible case: 'Here Littleton explaineth a man of no sound memory to be non compos mentis. Many times (as it here appeareth) the Latin word explaineth the true sense; and calleth him not *amens, demens, furiosus lunaticus, fatuus, stultus*, or the like; for 'non compos mentis' is most sure and legal.' Lord Coke there considers the word '*lunaticus*' as by no means material; only classing it with '*amens, demens*', etc; but he says 'non compos mentis' is the sure term. The commentary proceeds thus: 'Non compos mentis, is of four sorts: first, *idiota*; which from his nativity by 'a perpetual infirmity is non compos mentis; secondly, he, that by sickness, grief, or other accident, wholly loseth his memory and understanding.' Here is the very man: not born without reason; but who has lost it from sickness, grief, or other accident; for you cannot enter into the mind; to know, by what means it is disorganized: but you find it disorganized; and who can say, I have not a jurisdiction? There is no doubt, the moon has no influence; and there are many persons, who never have lucid intervals that come within this second description. But they must have lost their understanding to this extent; that they are not capable of the management of themselves and their affairs. Lord Coke is so far from putting the person he describes by the term '*lunaticus*' in the class, that I have just noticed, that he puts that person by himself; describing him to be a man, who hath sometimes his understanding, and sometimes not; and this is the ancient law of the country. This is not a man, who has sometimes understanding, and sometimes not; his understanding is defunct: he has survived the period, that providence has assigned to the stability of his mind. In the remainder of this part of the commentary Lord Coke continues to use the phrase 'non compos mentis'.

It is clear from this passage that a person who loses the use of his mental faculty as a result of 'accident' (ie any unforeseen event) is a person of unsound mind for the purpose of the common law. There is no reason to believe that the legislature, in using the expression 'unsound mind' in the Act and not defining it, intends to give it a less comprehensive meaning as suggested by counsel. The 1959 Act merely provided a more modern and socially acceptable expression, ie 'mental disorder' to describe the same medical condition. Accordingly, I am of the view that if the plaintiff's mental condition is so impaired by his head injuries that he is unable to manage his own affairs, he would be within the scope of the Act for the purpose of an inquiry thereunder.

There is however a procedural difficulty in applying O 76 r 2 to the application to dismiss the action. The rule says that a person under disability may not bring an action except by his next friend. A person is under disability if he is a patient and a 'patient' means a mentally disordered person within the meaning of the Act. Section 2 of the Act defines a 'mentally disordered person' to mean any person found by due course of law to be of unsound mind and incapable of managing himself or his affairs. It is not disputed that the plaintiff is not a mentally disordered person as defined as he has not been so found by due course of law. On this ground also, the application to dismiss the action must be dismissed. As framed, the rule makes it impossible for any party to apply to dismiss any action on the ground of disability due to mental disorder until and unless the other party has been so found by due course of law. The English O 80 made for the purpose of the 1959 Act allowed the court on hearing the application to be satisfied with the incapacity of the party alleged to be

disabled without being so found by a judge of the court of protection under the 1959 Act.

It is not clear whether the assistant registrar did not dismiss the action because the plaintiff was not a mentally disordered person as defined in the Act or because the medical report was insufficient to show that the plaintiff was of unsound mind. The medical report refers to the plaintiff's condition at about seven months before the issue of the writ and therefore, without further medical and more recent evidence, it might be insufficient for the purpose of the application to dismiss. All that is known is that the plaintiff was in a vegetative state and physically unable to manage himself. Presumably the assistant registrar was not entirely satisfied that this evidence was not sufficient to show that the mental condition of the plaintiff was such that he would have been unable to give any instructions whatever for the commencement of the action, and this would provide one explanation for the form of the order he made. In any case, the application to dismiss the action must fail on the ground that the plaintiff was not a person under disability for the purpose of O 76 at the time he commenced this action.

For the above reasons, I find that there was neither a legal nor a factual basis for an order to stay the action until the plaintiff's mental condition be determined. The appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *YH Cheong*; *Murphy & Dunbar*.

Reported by *Terence Tan Bian Chye*

Asia Polyurethane Mfg Pte Ltd v Woon Sow Liong

HIGH COURT (SINGAPORE) — SUIT NO 2340 OF 1989
CHAN SEK KEONG J
31 MARCH 1990

Contract — Covenant in restraint of trade — Consideration to enforce covenant — Whether continuing employment would constitute consideration — Length of restraint — Previous covenant for shorter period

Civil Procedure — Interim injunction — Failure to make full and frank disclosure — Court's discretion to discharge injunction

The plaintiffs obtained an ex parte injunction restraining the defendant for five years from being employed or advising any company or any business of a similar nature to the business carried on by the plaintiffs or canvassing any customer of the plaintiffs. The defendant had signed a secrecy deed containing the covenant in terms of the injunction as he was afraid he would be dismissed from the employment of the plaintiffs if he did not. The defendant subsequently left the plaintiffs' firm and then obtained employment with a company ('Olin') which carried on the same business as the plaintiffs. The defendant, in applying to discharge the injunction, stated that the secrecy deed relied upon by the plaintiffs was the second deed he had signed and that the first deed was in exactly the same terms except that the covenant was for two years instead of five years.

Held, allowing the defendant's application:

(1) All covenants in restraint of trade are prima facie void unless it is reasonable in the interests of the parties concerned and also reasonable in the interest of the public. In the absence of any interest of the employer that requires protection, which may be trade secrets or confidential information relating to customers etc, it is contrary to public policy to restrain competition. On the evidence, the court was not satisfied that the plaintiffs had any secret process to protect.

(2) It is not a strict rule that an interim injunction must be discharged on the ground that the plaintiffs had failed to make full and frank disclosure of all material facts. The court has a discretion to maintain it if the defendant had not been prejudiced. In the present case, as the restraint period commenced from the date the defendant ceased employment with the plaintiffs and that period had not expired at the date of commencement of this action, the defendant was not prejudiced on that ground.

(3) The plaintiffs had, by stipulating a shorter period of restraint in the first deed, provided the necessary evidence that that period was sufficient to protect their legitimate interests. In the absence of any explanation from the plaintiffs, and there was no explanation as to why the covenant was extended, the court concluded that the new term of the restraint, extending the period of restraint by three years, was unreasonable.

Cases referred to

1 *Brink's-MAT Ltd* v *Elcombe* [1988] 3 All ER 188 (folld)
2 *Commercial Plastics Ltd* v *Vincent* [1964] 3 All ER 546 (folld)

Lawrence Wong for the plaintiffs.
James Goon for the defendant.

Cur Adv Vult